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January 17, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 87-266 and RM-8221

Dear Mr. Caton:

Transmitted herewith, on behalf of TDS Telecommunications Corp., are an original and nine (9) copies of its comments in the above-referenced proceeding.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

TELEPHONE COMPANY-
CABLE TELEVISION
Cross-Ownership Rules,
Sections 63.54-63.58

and

Amendments of Parts 32, 36,
61, 64, and 69 of the
Commission's Rules to
Establish and Implement
Regulatory Procedures for
Video Dialtone Service

CC Docket No. 87-266

RM-8221

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COMMENTS OF TDS TELECOMMUNICATIONS CORP.

TDS Telecommunications Corp. (TDS Telecom), by its attorneys, submits these reply comments in the above-captioned proceeding to respond to or elaborate upon points made in various comments.¹ TDS Telecom believes the comments demonstrate that the Commission should (a) heed the concerns of both the cable and the local exchange carrier (LEC) industry and eliminate or substantially relax its restriction on buyouts and joint ventures for small and

¹ Comments filed December 16, 1994, are identified herein by the name, abbreviation, or acronym for the filing party and the relevant page or pages.

rural markets; (b) extend the rural exemption and apply it (at a minimum) to acquisitions in qualified areas, as Congress directed, without grafting on unlawful case-by-case scrutiny of rural market conditions and (c) finalize and expand its tentative decision to increase the maximum community size density benchmark for the statutory rural exemption, as soon as possible. These actions are necessary to spur integrated broadband deployment and to stimulate genuine competition among diverse information and other services in small and rural markets.

**Permitting Acquisitions in Small and Rural Markets
Will Stimulate True Competition Where it is Feasible**

The center for Media Education, et al. (pp. 2-4) (Center) contends that the Commission must keep its buyout ban broad to prevent overcharges for telephone and cable service. It thinks "vibrant" competition can only emerge through requiring two competing facilities-based systems if a LEC wants to provide video dialtone service. The economics of the marketplace in New York, Los Angeles or Chicago may permit those markets to become genuinely competitive. In contrast, small towns and rural areas will likely not attract, let alone sustain two state-of-the-art systems, unless the Commission encourages spurious competition by handicapping in favor of would-be competitors. Yet, modern telecommunications and information networks providing reasonably comparable opportunities in rural and urban areas are necessary to usher small market consumers and businesses into the 21st Century. Such evolving networks will provide access to the information resources of all kinds that will be essential for economic growth, improved medical care, education, social services and a quality of life that will attract and retain residents and businesses.

Instead of "protecting captive ratepayers from monopoly abuses," as the Center asserts, the requested requirements for two wires in every town and hamlet (unless one of the companies desiring to merge is in extremis) will likely stifle even a first interactive broadband network from reaching out to everyone.² The Commission itself has recognized³ that facilities-based competition is not likely to develop or be sustainable in rural areas. Barring acquisitions unless a system is failing will undermine incentives for timely development of truly "vibrant competition." This will deny those markets that cannot support two systems the benefit of competition among multiple diverse information and program providers on one efficiently integrated multi-purpose broadband platform.⁴

The Commission Should Incorporate Size and Density
into a Small and Rural Market Acquisition Standard

GTE states (p. 15) that video dialtone systems "will not prove to be competitively viable in markets with populations of 50,000 or less," identifying population and density as the key criteria for such multi-purpose broadband systems. The 90,000 population standard also had support from small cable companies in connection with last year's legislative debates. TDS Telecom agrees that both size and density are primary factors. However, we

² See John C. Panzar, "Information Age Communications for Rural America," pp. 15-16, n. 24 (1987) (explaining that requiring "two pipeline" development may result in no efficient, integrated and up-to-date broadband "pipeline" for rural Americans).

³ FNPRM at para. 276.

⁴ The charge that abusive pricing will result from LEC acquisitions of cable systems in small and rural markets is unsupported. Moreover the Commission has rules and policies in place to guard against misallocation of costs between regulated activities, such as telephony, and unregulated businesses, such as providing cable television programming directly to customers.

believe a standard allowing buyouts for both small and low-density markets is a better tool to counteract these two impediments to video dialtone and integrated network development.

Accordingly, TDS Telecom recommends allowing LEC acquisition of any system in an area that has (a) 50,000 or fewer inhabitants or (b) evidences low density because the service area contains no territory within an urbanized area identified by the U.S. Bureau of the Census and no incorporated or unincorporated (*i.e.* "census designated") place of 10,000 -- or, better yet, 20,000 or 25,000 inhabitants.

U.S. West points out (p. 20) that even the 10,000 inhabitants benchmark for the statutory rural exemptions, already tentatively accepted by the Commission in an earlier phase of this proceeding⁵ "is too small to cover the need which the exception is designed to meet." It therefore suggests a "significantly" higher level. BellSouth supports (p. 6, n. 7) a population level of 25,000. Both a market population test and the maximum community size test aimed at identifying low density areas are necessary to make up for the lack of "critical mass" and economies of scale and density in small and rural markets. Both must figure in the video dialtone acquisition standard to be set here.

NCTA, representing the cable television industry, also urges the Commission to adopt the 50,000 inhabitants population benchmark for permissible acquisitions and allow waivers for non-sustainable systems or to serve the public interest. Like their small and rural market LEC counterparts, cable operators in small and rural markets are well aware that two integrated systems will find it hard to survive, let alone to deploy evolving technologies to

⁵ In the Matter of Telephone Company--Cable Television Cross-Ownership, 7 F.C.C. Rcd. 5781, 5855-57, appeals pending sub nom. Mankato Citizens Telephone Co. et al. v. F.C.C., Nos. 92-1404, et al. (D.C. Cir. Sept. 9, 1992).

provide access to a rich menu of competing information and other services. TDS Telecom emphasizes that the Commission should adopt a broad acquisition exemption for small and rural markets in its video dialtone rules. Opportunities for waivers of the standard could then be available to deal with special circumstances for LECs not covered by the exemption.⁶

Thus, notwithstanding Ameritech's claim that case-by-case scrutiny is indispensable for examining whether market conditions warrant relaxation of the buyout prohibition, the Commission should not subject systems in the small and rural markets (identified by TDS Telecom's recommended test) to burdensome and expansive proceedings. Transactions mutually agreed to by a cable system operator and a LEC, both familiar from direct experience with local business and market conditions, are likely to improve efficiency, increase access to new services and technologies and expand opportunities to provide rural areas with services and rates comparable to those in metropolitan areas.

U.S. West suggests (p. 5) that no prior approval of acquisitions should be required for "areas covered by the rural exemption." TDS Telecom agrees and recommends eliminating all Section 214 requirements for acquisition or construction of cable systems by qualified LECs.⁷ In a similar vein, BellSouth asks the Commission to presume that markets subject to

⁶ BellSouth wants the Commission to "permit LECs great flexibility in demonstrating that two-wire competition is not viable." That principle might be satisfactory for evaluating acquisition transactions outside small and rural markets. However, the Commission should wholly exempt areas meeting the standard TDS Telecom proposes from the acquisition ban.

⁷ The legislative history of the statute codifying the cross-ownership ban states that the exemption should be "automatic." House Report No. 98-934, 8th Cong., 2nd Sess. (1994), reproduced in the 1994 U.S. Code, Cong. and Admin. News, Vol. 5, p. 4655, 4693. (Cited page numbers are in that source). The Report says the law eliminated "all legal and administra-

the rural exemption would be allowed to acquire co-located cable systems. In fact, Congress has already made the determination that they are. The law permits cross-ownership of cable and telephone systems to the extent that the service is within a rural area, as defined by the Commission.⁸ Beyond that, the House Report on the legislation expressly states that the rural exemption permits acquisition as well as construction of cable systems.⁹ Thus, the Commission cannot lawfully prevent acquisitions in areas eligible for the rural exemption.

The Commission Should Raise the
Rural Exemption Without Further Delay

TDS Telecom agrees with OPASTCO (pp. 2-4) that the Commission should raise the rural exemption's maximum community population benchmark, as well as providing a broad standard that allows acquisitions in both small and rural markets. Indeed, TDS Telecom urges the Commission to act as soon as possible on the Commission's own proposal to raise the rural exemption but to adopt a higher benchmark than the 10,000 it suggested there. It should act simultaneously with acting on issues raised in this FNPRM, if not sooner. The record in the earlier, still undecided phase of this proceeding proposing an expanded rural

tive barriers" other than satisfying the Commission's definition of "rural" and obtaining a local franchise.

⁸ 47 U.S.C. Sec. 533(b); see, also, 47 C.F.R. Sec. 63.58.

⁹ House Report at 4694. The passage is unambiguous:
The Committee further intends that under subsection 613(b)(3) telephone companies seeking to acquire existing cable systems or franchises to serve a rural area shall not be required to apply to the FCC for a waiver.

exemption fully justifies increasing the maximum community size standard to 25,000, or at the very least to 10,000.¹⁰

Conclusion

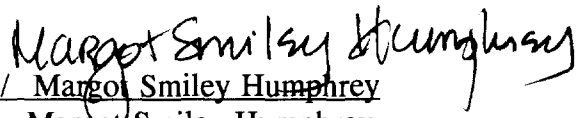
Small and rural markets cannot support or sustain two sets of telephone or cable facilities, let alone two integrated multipurpose broadband networks. Therefore, the Commission should (1) concentrate on stimulating inter-service competition in such markets by allowing buyouts at the option of the cable system, and (2) apply alternative service area population (50,000 inhabitants) and density-related (i.e. maximum community size of 10,000) criteria to identify where acquisitions are permissible, and (3) raise the general rural

¹⁰ TDS Telecom agrees with NYNEX (pp. 19-20) that buyouts must be permitted, but not required to ensure that a multipurpose integrated network that would otherwise be feasible is not curtailed by a requirement to purchase cable facilities that are unsuitable for upgrading to provide both telephone and video dialtone services.

exemption for cable television and LEC cross-ownership as soon as it decides the issues now under active consideration here, if not sooner.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORP.

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January 17, 1995

CERTIFICATE OF SERVICE

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Dated: January 17, 1995

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